

IN THE  
**ARIZONA COURT OF APPEALS**  
DIVISION TWO

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THE STATE OF ARIZONA,  
*Respondent,*

*v.*

TERRY DALE JAMES,  
*Petitioner.*

No. 2 CA-CR 2020-0044-PR  
Filed June 23, 2020

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THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND  
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.  
NOT FOR PUBLICATION  
*See Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Crim. P. 31.19(e).*

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Petition for Review from the Superior Court in Pima County  
No. CR20141325001  
The Honorable Teresa Godoy, Judge Pro Tempore

**REVIEW GRANTED; RELIEF DENIED**

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Terry Dale James, Florence  
*In Propria Persona*

STATE v. JAMES  
Decision of the Court

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MEMORANDUM DECISION

Presiding Judge Staring authored the decision of the Court, in which Chief Judge Vásquez and Judge Brearcliffe concurred.

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S T A R I N G, Presiding Judge:

¶1 Terry James seeks review of the trial court’s ruling summarily dismissing his petition for post-conviction relief filed pursuant to Rule 32, Ariz. R. Crim. P.<sup>1</sup> We will not disturb that order unless the court abused its discretion. *See State v. Roseberry*, 237 Ariz. 507, ¶ 7 (2015). James has not shown such abuse here.

¶2 After a jury trial, James was convicted of child molestation and of sexual conduct with a minor under the age of twelve and was sentenced to consecutive prison terms of twenty-one years for the child molestation charge and life with the possibility of release after thirty-five years for the sexual conduct charge. *State v. James*, 242 Ariz. 126, ¶ 1 (App. 2017). We affirmed his convictions and sentences on appeal. *Id.*

¶3 James sought post-conviction relief, and appointed counsel filed a notice stating he had reviewed the record but found “no issues” to raise in a petition for post-conviction relief. James filed a pro se petition claiming he was actually innocent and that his trial counsel had been ineffective in failing to call witnesses in his defense. He also raised several claims of trial error, such as the court’s denial of his motion to suppress a confrontation call, insufficient evidence, prosecutorial misconduct, jury tampering, double jeopardy, and improper jury selection. The trial court summarily dismissed the petition. It found James’s claims of trial error were precluded because they could have been raised on direct appeal, that

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<sup>1</sup> Effective January 1, 2020, our supreme court amended the post-conviction relief rules. Ariz. Sup. Ct. Order R-19-0012 (Aug. 29, 2019). The amendments apply to all cases pending on the effective date unless a court determines that “applying the rule or amendment would be infeasible or work an injustice.” *Id.* Because it is neither infeasible nor works an injustice here, we cite to and apply the current version of the rules. *See State v. Mendoza*, No. 2 CA-CR 2019-0281-PR, n.1, 2020 WL 3055826 (Ariz. App. June 9, 2020).

STATE v. JAMES  
Decision of the Court

his claim of actual innocence failed in light of the victim's testimony and his admission during the confrontation call, and that James had demonstrated neither that the proposed witnesses "had direct, relevant knowledge of the charged incidents or other act evidence" nor a reasonable probability their testimony would have changed the outcome of his trial. The court denied James's motion for reconsideration, and this petition for review followed.

¶4 On review, James largely repeats his claims. Although he complains the trial court erred in finding his claims of trial error precluded,<sup>2</sup> he does not address the court's basis for that conclusion: that he could have raised the claims on appeal. See Ariz. R. Crim. P. 32.2(a)(3). He instead asserts, for the first time, that his trial and appellate counsel were ineffective in failing to raise these issues. We do not consider issues raised for the first time on review. See Ariz. R. Crim. P. 32.16(c)(2)(B) (appellate court reviews issues presented to trial court); *State v. Ramirez*, 126 Ariz. 464, 468 (App. 1980) (appellate court will not address arguments asserted for first time in petition for review).

¶5 As to James's remaining claims—actual innocence and ineffective assistance of trial counsel for failing to call defense witnesses—the trial court correctly resolved those claims on their merits.<sup>3</sup> Because that analysis is thorough and well-reasoned, we adopt it. See *State v. Whipple*, 177 Ariz. 272, 274 (App. 1993) (when trial court has correctly ruled on issues raised "in a fashion that will allow any court in the future to understand the resolution[, n]o useful purpose would be served by this court rehashing the trial court's correct ruling in a written decision").

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<sup>2</sup>James also complains that the trial court erred in finding precluded his claims of ineffective assistance and actual innocence. The court did not find those claims precluded but instead rejected them on their merits.

<sup>3</sup>Although James at times identifies one of his claims as a claim of actual innocence under Rule 32.1(h), which is not subject to preclusion, see Ariz. R. Crim. P. 32.2(b), the claim is framed as a challenge to the sufficiency of the evidence—a claim James could have raised on appeal and, as the trial court correctly concluded, is therefore precluded. See Ariz. R. Crim. P. 32.2(a)(3). And, in any event, in light of the victim's testimony and James's admissions during the confrontation call, he has not shown he is entitled to relief under Rule 32.1(h), which requires him to show "that no reasonable fact-finder would find [him] guilty of the offense beyond a reasonable doubt."

STATE v. JAMES  
Decision of the Court

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We grant review but deny relief.